



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

000604

REPLY TO THE ATTENTION OF

Mr. Robert M. Baratta, Jr.
Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677

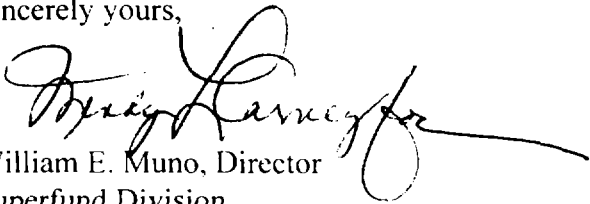
Re: De Minimis Settlement Order
Vacant Lot Site, North Chicago, Illinois
Docket No. V-W-00C-594

Dear Mr. Baratta:

This letter is to inform you on behalf of the Respondents to the above-referenced Order that after conclusion of the public comment period described in Section XV of that Order, I hereby ratify the U.S. EPA's prior contingent signature of the Order.

A copy of the executed signature page is enclosed for your records. The Order takes effect on the date of this letter providing notice to you.

Sincerely yours,


William E. Muno, Director
Superfund Division

Enclosure

cc (w/encl.): Thomas Krueger, C-14J
John O'Grady, SR-6J
Anthony Audia, MF-10J
Alan Tenenbaum, U.S. DOJ

EPA Region 5 Records Ctr.



229916

IN THE MATTER OF:)
) U. S. EPA Docket No. V-W-00-C-594
)
 Vacant Lot Site)
)
 North Chicago, Illinois)
)
 Proceeding under Section 122(g)(4))
 of the Comprehensive Environmental) ADMINISTRATIVE ORDER
 Response, Compensation, and Liability) ON CONSENT
 Act of 1980, as amended,)
 42 U.S.C. § 9622(g)(4))
)

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9622(g)(4) ("CERCLA"), to reach settlements in actions under Section 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) or 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E, and to the Director of the Superfund Division, Region 5, by Regional Delegation 14-14-E.

II. DEFINITIONS

"Property" shall mean that portion of the Site, encompassing approximately 6.4 acres located at the northeast corner of Commonwealth Avenue and Martin Luther King Drive in North Chicago, Lake County, Illinois, which is legally described in Attachment I to this Consent Order, title to

which is held in the Chicago Title and Trust Land Trust No. 40966.

"Site" shall mean the Vacant Lot Site, encompassing approximately 6.4 acres, located at the northeast corner of Commonwealth Avenue and Martin Luther King Drive in North Chicago, Lake County, Illinois, and depicted generally on the map attached as Exhibit 1. The Site shall also include all areas to which hazardous substances and/or pollutants or contaminants have come to be located at or in the vicinity of the Property.

III. STATEMENT OF FACTS

1. Analyses of soil at the Site indicated elevated levels of lead, beryllium, polychlorinated biphenyls ("PCBs"), perchloroethene ("PERC"), polyaromatic hydrocarbons ("PAHs"), and other organic compounds. Analyses of sediments in Pettibone Creek at the Site indicated elevated levels of lead, copper and PAHs. Analyses of ground water at the Site indicated elevated levels of vinyl chloride, PERC and other organic compounds.

2. PCBs, PERC, PAHs, vinyl chloride, lead and copper constitute hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. Hazardous substances have been or are threatened to be released into the environment at or from the Site.

4. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response actions at the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake response action in the future. EPA's response actions at the Site include the completion of an Engineering Evaluation/Cost Analysis dated October 30, 1997, and the excavation and disposal of contaminated soil and sediment at the Site. EPA may continue to take response actions at the Site in the future. EPA has also initiated further investigation of possible ground water contamination sources to the east of the Property. The Site is not listed on EPA's National Priorities List.

5. In performing these response actions, EPA has incurred and may continue to incur response costs at or in connection with the Site. EPA has incurred and paid approximately \$3.1 million in response costs through December 31, 1999.

6. Respondent, Chicago Title and Trust Company Land Trust No. 40966, currently holds title to the Property. Respondent, Chicago Title and Trust Company Land Trust [REDACTED] acquired title to the Property on or about [REDACTED] pursuant to an installment contract with the Chicago North Shore and Milwaukee Railroad, [REDACTED] Respondent, the [REDACTED], and Respondent, The Northern Trust Company, successor in interest to The Northern Trust Bank/Lake Forest, is the trustee of the [REDACTED]

[REDACTED]

Respondent, The Northern Trust Company, successor in interest to The Northern Trust Bank/Lake Forest, as trustee of the [REDACTED] proposes to direct Chicago Title and Trust Company, as trustee of [REDACTED] to transfer title to the Property to BREMS Realty, L.L.C. ("BREMS"), subject to execution of: (i) this Consent Order, (ii) an agreement between BREMS and Respondents, and (iii) a prospective purchaser agreement between EPA and BREMS.

7. The Respondents represent, and for the purposes of this Agreement, EPA relies on those representations, that, they are not in any way affiliated with BREMS or any of its affiliated entities, and other than negotiations for transfer of the Property, Respondents have not had any prior business relationships with BREMS or any of its affiliated entities, its officers, directors or shareholders.

8. Respondents represent, and for the purposes of this order EPA accepts, that Respondents did not (1) conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the Site; or (2) contribute to the release or threat of release of a hazardous substance at the Site through any action or omission. Moreover, Respondents did not obtain any interest in the Site, to the extent applicable to the individual Respondents, with actual or constructive knowledge that the Site was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance. Respondents represent that the Property has, at times, been used as a parking lot.

9. Consideration to be provided to EPA pursuant to this Consent Order is a minor portion of the total response costs at the Site which EPA, based upon currently available information, estimates to be at least \$3.1 million.

IV. DETERMINATIONS

Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

1. The Site as described in Section II of this Consent Order is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

3. Respondent, The 1976 Residuary Trust of John F. Stack, is an "owner" of a facility

within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1). Under certain limited circumstances, the remaining Respondents may be considered "owners" or "operators" of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and "potentially responsible parties" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

4. The past, present or future migration of hazardous substances from the Site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

5. Prompt settlement with the Respondents is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

6. This Consent Order involves at most only a minor portion of the response costs at the Site pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

7. Respondents are eligible for a de minimis settlement pursuant to Section 122(g)(1)(B) of CERCLA, 42 U.S.C. § 9622(g)(1)(B).

V. ORDER

Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, it is hereby AGREED TO AND ORDERED:

VI. ACCESS AND NOTICE

1. For as long as they possess title or any interest in the Property, Respondents hereby grant to EPA, its representatives, contractors, agents, and all other persons performing response actions under EPA's oversight, an irrevocable right of access to the Site for the purposes of monitoring the terms of this Consent Order and performing response actions at the Site. Nothing herein shall limit EPA's right of access under applicable law.

2. Nothing in this Consent Order shall in any manner restrict or limit the nature or scope of response actions which may be taken by EPA in fulfilling its responsibilities under federal law. Respondents recognize that the implementation of response actions at the Site may interfere with the use of the Property. Respondents agree to cooperate with EPA in the implementation of response actions at the Site and further agree not to interfere with such response actions. Nothing in this Order, however, shall require the Respondents to undertake any action at the Site after they no longer possess title or interest in the Property. Notwithstanding

any provision of this Consent Order, the EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA and any other applicable statute or regulations.

VII. DUE CARE

3. Nothing in this Consent Order shall be construed to relieve Respondents of their duty to exercise due care with respect to the hazardous substances at the Site or their duty to comply with all applicable laws and regulations.

VIII. CONSIDERATION

4. Respondent, The Northern Trust Company, successor in interest to The Northern Trust Bank/Lake Forest, as trustee under the [REDACTED], agrees that within 30 days of the effective date of this Order and subject to the execution of a reasonable agreement between itself and BREMS (which shall include a full and complete release to Respondents from BREMS of all claims, known or unknown, associated with the Site), it shall cause title and possession of the Property to be conveyed to BREMS for consideration of \$35,000 all of which shall be paid to the EPA Hazardous Substance Superfund to reimburse a portion of EPA's response costs at the Site, pursuant to a prospective purchaser agreement between EPA and BREMS. Respondents agree to forego any and all rights to the proceeds from such transfer of the Property.

IX. CIVIL PENALTIES

5. In addition to any other remedies or sanctions available to EPA, a Respondent shall be subject to a civil penalty of up to \$27,500 per day for each failure or refusal to undertake any affirmative action explicitly required of that particular Respondent under this Consent Order pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l). Each Respondent shall not be liable for penalties based upon the act or omission of any other Respondent.

X. CERTIFICATION OF RESPONDENTS

6. By signing this Consent Order, each Respondent certifies, individually (except with regard to The Northern Trust Company, successor in interest to The Northern Trust Bank/Lake Forest, which makes such certification solely as trustee of the [REDACTED], which makes such certification solely as Trustee under Land Trust [REDACTED] that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to its qualifications for a de minimis settlement under Section 122(g)(1)(B) of CERCLA, 42 U.S.C. §9622(g)(1)(B), or to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. COVENANT NOT TO SUE

7. Subject to the reservation of rights in Paragraphs 9 and 10, Section XII, of this Consent Order, upon payment to EPA of the consideration specified in Paragraph 4, Section VIII, of this Consent Order, EPA covenants not to sue or take any other civil or administrative action against any one or all of the Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) or 9607(a), or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973 ("RCRA"), with regard to the Site.

8. In consideration of EPA's covenant not to sue in Paragraph 7, Section XI, of this Consent Order, the Respondents agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law, or any claims arising out of response activities at the Site. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XII. RESERVATION OF RIGHTS

9. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States, including EPA, may have against Respondents for:

a) any liability as a result of failure to provide access, notice, or otherwise comply with Paragraphs 1 and 2, Section VI, of this Consent Order;

b) any liability as a result of failure to exercise due care with respect to hazardous substances at the Site after the date of this Consent Order;

c) any liability as a result of failure to provide the consideration required by Paragraph 4, Section VIII, of this Consent Order;

d) any liability resulting from Respondents conducting or permitting the generation, transportation, storage, treatment, or disposal of any hazardous substance at the Site or contributing to the release or threat of release of a hazardous substance at the Site through any action or omission, or any liability resulting from exacerbation by Respondents after the date of the Consent Order of the release or threat of release of hazardous substances from the Site;

e) any and all criminal liability; or

f) any matters not expressly included in the covenant not to sue set forth in Paragraph 7, Section XI, of this Consent Order, including, without limitation, any liability for damages to natural resources.

10. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if: (1) information different from that specified in Paragraphs 6-8, Section III, is discovered which indicates that any Respondent fails to meet any of the criteria specified in Section 122(g)(1)(B) of CERCLA; or (2) U.S. EPA does not receive the \$35,000 payment to the EPA Hazardous Substance Superfund described in Paragraph 4, Section VIII.

11. Nothing in this Consent Order is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation or other entity not a signatory to this Consent Order. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. The United States and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Notwithstanding anything to the contrary in this Consent Order, Respondents reserve the right to assert that their liability, individually and jointly (including, without limitation, for those items described in Paragraph 9, Section XII, above) is limited solely to the assets held in the [REDACTED] and that

EPA must satisfy such liability solely from such assets.

12. EPA and Respondents agree that the actions undertaken by the Respondents in accordance with this Consent Order do not constitute an admission of any liability by any of the Respondents. The Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the Findings of Fact or Determinations contained in this Consent Order.

XIII. CONTRIBUTION PROTECTION

13. The Parties agree that each Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are all response actions taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site. The "matters addressed" in this Consent Order also include any injunctive relief sought by the United States or private parties under CERCLA or RCRA at or in connection with the Site.

XIV. PARTIES BOUND

14. This Consent Order shall apply to and be binding upon the Respondents and their heirs, agents, officers, directors, employees, successors and assigns. Each signatory represents that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the Respondent on whose behalf they sign.

15. In the event that the Respondents do not transfer title or possession of the Site, as described in Paragraph 4, Section VIII, this Consent Order shall be null and void.

XV. PUBLIC COMMENT

16. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or modify consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XVI. ATTORNEY GENERAL APPROVAL

17. The Attorney General or her designee has issued prior written approval of the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA.

XVII. EFFECTIVE DATE

18. The effective date of this Consent Order shall be the date upon which EPA issues written notice to the Respondent that the public comment period pursuant to Paragraph 17, Section XVI, of this Consent Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

RESPONDENTS:

Chicago Title and Trust Company, as trustee under Land Trust No. 40966.

By: _____

Date: May 4, 2000

The Northern Trust Company, successor in interest to The Northern Trust Bank/Lake Forest, individually and as trustee under the _____

By: _____

Date: _____

Mary Stack

Date: _____

IN THE MATTER OF:
Vacant Lot Site
North Chicago, Illinois

XVII. EFFECTIVE DATE

18. The effective date of this Consent Order shall be the date upon which EPA issues written notice to the Respondent that the public comment period pursuant to Paragraph 17, Section XVI, of this Consent Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

RESPONDENTS:

Chicago Title and Trust Company,

as trustee under Land Trust [REDACTED]

By: _____

Date: _____

The Northern Trust Company, successor in interest to The Northern Trust Bank/Lake Forest, individually and as trustee under the [REDACTED]

By: _____

[Signature]
VICE PRESIDENT

Date: _____

5/1/00

[REDACTED]

X *[Signature]*
[REDACTED]

Date: _____

4-27-00

IN THE MATTER OF:
Vacant Lot Site
North Chicago, Illinois

[REDACTED]

Date: _____

[REDACTED]

[REDACTED]

Date: 1/26/00

[REDACTED]

Date: _____

[REDACTED]

Date: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____

Date: _____

William E. Muno, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

IN THE MATTER OF:
Vacant Lot Site
North Chicago, Illinois

[REDACTED]

Date: _____

[REDACTED]

Date: _____

[REDACTED]

X

[REDACTED]

Date: 4/26/2000

[REDACTED]

Date: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____

Date: _____

William E. Muno, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

IN THE MATTER OF:
Vacant Lot Site
North Chicago, Illinois

[REDACTED]

Date: _____

[REDACTED]

Date: _____

[REDACTED]

Date: _____

[REDACTED]

X [REDACTED]
Date: 4/25/2022

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____
William E. Muno, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

IN THE MATTER OF:
Vacant Lot Site
North Chicago, Illinois

[REDACTED]

[REDACTED]

Date: 4/26/2000

Date: _____

[REDACTED]

Date: _____

[REDACTED]

Date: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: *Mindy L. Carny for* Date: 5/19/00
William E. Muno, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

IN THE MATTER OF:
Vacant Lot Site
North Chicago, Illinois



U.S. Department of Justice

Environment and Natural Resources Division

Assistant Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Telephone (202) 514-2701
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William E. Muno
Director of the Superfund Division
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77 West Jackson Blvd
Chicago, IL 60604


Gail Ginsberg
Regional Counsel
U.S. Environmental Protection
Agency - Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Re: De Minimis Administrative Order on Consent,
Vulcan Louisville (Vacant Lot) Superfund Site,
North Chicago, Illinois

Dear Mr. Muno and Ms. Ginsberg:

This is to inform you that, on behalf of the Attorney General of the United States and pursuant to the terms of section 101(g) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9622(g), I am approving in writing on this date the attached de minimis settlement for the Vacant Lot Superfund Site in North Chicago, Illinois.

Sincerely,


Lois J. Schiffer
Assistant Attorney General
Department of Justice
Environment and Natural Resources
Division